



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

Mr. Tom Donnelly
City Administrator
City of Hallettsville
101 North Main
Hallettsville, Texas 77964-2727

OR2011-08815

Dear Mr. Donnelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 421339.

The Hallettsville Police Department (the "department") received a request for information. You state the department has released the call sheet and first four pages of the submitted incident report. You claim the remaining portions of the incident report are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the written request for information and a signed statement or other evidence showing the date the governmental body received the request. *See* Gov't Code § 552.301(e)(1)(B)-(C). As of the date of this letter, you have not submitted to this office a copy of the request for information, nor have you submitted a signed statement or other evidence showing the date the department received the request. Consequently, we find the department has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994).

Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert the remaining portions of the incident report are excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, section 552.108 does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the remaining portions of the incident report are not excepted under section 552.108 of the Government Code and must be released.¹

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

¹We note the remaining portions of the incident report include a Texas license plate number. Section 552.130 of the Government Code excepts from public release information relating to a motor vehicle title or registration issued by a Texas agency. *See* Gov't Code § 552.130(a)(2). This section protects personal privacy. Pursuant to section 552.023(a) of the Government Code, a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect the person's privacy interests. *Id.* § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Because we are unable to determine the identity of the requestor in this instance, it is possible the requestor has a right of access to the license plate number. Therefore, if the requestor is the person to whom the license plate number belongs, or is that person's authorized representative, the requestor has a right of access to the license plate number pursuant to section 552.023. Otherwise, the department must withhold the marked license plate number under section 552.130 of the Government Code.

Ref: ID# 421339

Enc. Submitted documents

c: Requestor
(w/o enclosures)